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THE STATE BAR OF CALIFORNIA
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THE STATE BAR COURT

HEARING DEPARTMENT - SAN FRANCISCO

In the Matter of) Case Nos.: 06-O-10445 [06-O-13209;
ARLENE D. KOCK,) 07-O-10836]
No. 80276)
NOTICE OF DISCIPLINARY CHARGES
A Member of the State Bar.)

NOTICE - FAILURE TO RESPOND!

IF YOU FAIL TO FILE AN ANSWER TO THIS NOTICE WITHIN THE TIME ALLOWED BY STATE BAR RULES, INCLUDING EXTENSIONS, OR IF YOU FAIL TO APPEAR AT THE STATE BAR COURT TRIAL, (1) YOUR DEFAULT SHALL BE ENTERED, (2) YOU SHALL BE ENROLLED AS AN INACTIVE MEMBER OF THE STATE BAR AND WILL NOT BE PERMITTED TO PRACTICE LAW UNLESS THE DEFAULT IS SET ASIDE ON MOTION TIMELY MADE UNDER THE RULES OF PROCEDURE OF THE STATE BAR, (3) YOU SHALL NOT BE PERMITTED TO PARTICIPATE FURTHER IN THESE PROCEEDINGS UNLESS YOUR DEFAULT IS SET ASIDE, AND (4) YOU SHALL BE SUBJECT TO ADDITIONAL DISCIPLINE.

STATE BAR RULES REQUIRE YOU TO FILE YOUR WRITTEN RESPONSE TO THIS NOTICE WITHIN TWENTY DAYS AFTER SERVICE.

IF YOUR DEFAULT IS ENTERED AND THE DISCIPLINE IMPOSED BY THE SUPREME COURT IN THIS PROCEEDING INCLUDES A PERIOD OF ACTUAL SUSPENSION, YOU WILL REMAIN SUSPENDED FROM THE PRACTICE OF LAW FOR AT LEAST THE PERIOD OF TIME SPECIFIED BY THE SUPREME COURT. IN ADDITION, THE ACTUAL SUSPENSION WILL CONTINUE UNTIL YOU HAVE REQUESTED, AND THE STATE

1 10. Thereafter, respondent charged Rourke fees for work performed after termination,
2 leaving a credit balance of \$1,740.

3 11. In or about December 2005, Rourke hired mediator, Michael Cogen ("Cogen"), to
4 assist her in the *Rourke v. Rourke* matter.

5 12. On or about December 29, 2005, Cogen sent a letter to respondent enclosing a
6 substitution of attorney form and requesting Rourke's file.

7 13. Respondent received Cogen's December 29, 2005 letter.

8 14. On or about February 7, 2006, respondent sent Rourke's file to Cogen.

9 15. It was not until on or about August 2, 2007, that respondent provided a refund to
10 Rourke of unearned fees in the amount of \$1,740.

11 16. By not refunding the \$1,740 to Rourke until on or about August 2, 2007, respondent
12 failed to promptly refund unearned fees.

13 COUNT ONE (B)
14 THE ROURKE MATTER
15 Case No. 06-O-10445
Rules of Professional Conduct, rule 3-700(D)(1)
[Failure to Release File]

16 17. Respondent wilfully violated Rules of Professional Conduct, rule 3-700(D)(1), by
17 failing to release promptly, upon termination of employment, to the client, at the request of the
18 client, all the client papers and property, as follows:

19 18. The allegations contained in Count One A are hereby incorporated by reference.

20 19. By not releasing the client file to Rourke until on or about February 7, 2006, when
21 her services were terminated and Rourke requested return of her file on December 10, 2005,
22 respondent failed, upon termination of employment, to release promptly to a client, at the request
23 of the client, all the client papers.

24 COUNT TWO (A)
25 THE HEINRICH MATTER
Case No. 06-O-13209
26 Rules of Professional Conduct, rule 3-110(A)
[Failure to Perform with Competence]

27 20. Respondent wilfully violated Rules of Professional Conduct, rule 3-110(A), by

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intentionally, recklessly, or repeatedly failing to perform legal services with competence, as follows:

21. On or about May 27, 2005, Douglas Heinrich ("Heinrich") hired respondent to assist in a marital dissolution matter entitled, *Heinrich v. Heinrich*, Santa Clara County Superior Court Case No. 1-04-FL-118196.

22. On or about May 27, 2005, respondent and Heinrich entered into a written fee agreement for the dissolution matter.

23. On or about May 27, 2005, Heinrich paid respondent \$500 in advanced fees for her services. On or about June 7, 2005, Heinrich paid respondent an additional \$3,000 in advanced fees.

24. On or about June 1, 2005, respondent substituted in as counsel for Heinrich in the *Heinrich v. Heinrich* matter.

25. On or about February 14, 2006, respondent filed a Marital Settlement Agreement ("MSA") in the *Heinrich v. Heinrich* matter.

26. On or about March 3, 2006, the court denied the MSA. On or about the same date, the court returned the MSA to respondent with a letter requesting one change to the MSA and advising that final disclosure documents from opposing counsel had not yet been submitted. Respondent received the court's letter.

27. Respondent failed to notify Heinrich about the denial of the MSA and the court's letter.

28. On or about March 30, 2006, Heinrich e-mailed respondent at "akockaol.com" wherein he stated: "It has been almost two months since our last information transfer. Could I please know what is going on with my case?" Respondent received Heinrich's March 30, 2006 e-mail.

29. On or about March 31, 2006, respondent's legal assistant, Denise Colagross, responded to Heinrich's e-mail to respondent with an e-mail stating: "I just received your divorce papers back from the court. Your soon to be ex-wife needs to file one more document. I will call and advise her attorney immediately. Also the court wants to add one more paragraph

1 to the child support section. It is a standard family code and I will let you know first thing next
2 week what exactly it says. Once these two things are accomplished I will mail it back to the
3 court and it should not take that long to be final since these are the only two corrections they
4 have.”

5 30. On or about June 6, 2006, opposing counsel in the *Heinrich v. Heinrich* matter filed
6 the final disclosure documents requested by the court in its March 3, 2006 notification, with a
7 copy to respondent.

8 31. On or about June 8, 2006, respondent received the final disclosure documents from
9 opposing counsel.

10 32. On November 7, 2006, respondent re-filed the corrected MSA in the *Heinrich v.*
11 *Heinrich* matter.

12 33. By delaying in filing the corrected MSA from March 2006 through November 2006,
13 a period of approximately eight months, respondent intentionally, recklessly and repeatedly
14 failed to perform legal services with competence.

15 COUNT TWO (B)
16 THE HEINRICH MATTER
Case No. 06-O-13209
17 Business and Professions Code, section 6068(m)
[Failure to Inform Client of Significant Development]

18 34. Respondent wilfully violated Business and Professions Code, section 6068(m), by
19 failing to keep a client reasonably informed of significant developments in a matter in which
20 Respondent had agreed to provide legal services, as follows:

21 35. The allegations in Count Two A are hereby incorporated by reference.

22 36. By failing to notify her client of the court’s denial of the MSA until March 31, 2006,
23 approximately three weeks after respondent received notification of the denial, and only after the
24 client requested an update on the status of his case, respondent failed to keep a client reasonably
25 informed of significant developments in a matter in which respondent had agreed to provide
26 legal services.

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COUNT THREE
THE LUIS MATTER
Case No. 07-O-10836
Rules of Professional Conduct, rule 3-700(D)(2)
[Failure to Refund Unearned Fees]

37. Respondent wilfully violated Rules of Professional Conduct, rule 3-700(D)(2), by failing to refund promptly any part of a fee paid in advance that has not been earned, as follows:

38. On or about April 25, 2005, Stacy Luis ("Luis") hired respondent to represent her in a family law matter entitled, *Luis v. Luis*, Contra Costa County Superior Court Case No. 205-01747.

39. On or about April 25, 2005, respondent and Luis entered into a written fee agreement for the family law matter.

40. In or about April 2005, Luis paid respondent \$5,000 in advanced fees for her services.

41. All work performed on behalf of Luis was billed against the \$5,000 paid by Luis as advanced fees.

42. In or about May 2006, Luis contacted respondent by telephone to advise that she and her husband had reconciled. Luis terminated respondent's services and requested a refund of unearned fees.

43. As of May 2006, Luis had a credit balance of \$3,933.

44. Respondent failed to provide a refund to Luis at that time.

45. After her services were terminated by Luis, respondent charged Luis additional fees and costs in the amount of \$1,084.50 for the period of October 6, 2006 through December 13, 2006.

46. On or about January 10, 2007, Luis sent a letter by certified mail to respondent to again request a refund of unearned fees.

47. On or about January 16, 2007, respondent received Luis' January 10, 2007 letter.

48. Thereafter, respondent and Luis negotiated the amount of the refund.

49. On or about February 28, 2007, provided a refund to Luis of unearned fees in the amount of \$3,278.50.

1 50. By not refunding the \$3,278.50 to Luis until on or about February 28, 2007,
2 approximately eight months after Luis terminated her services and requested a refund,
3 respondent failed to promptly refund unearned fees.

4 **NOTICE - INACTIVE ENROLLMENT!**

5 **YOU ARE HEREBY FURTHER NOTIFIED THAT IF THE STATE BAR**
6 **COURT FINDS, PURSUANT TO BUSINESS AND PROFESSIONS CODE**
7 **SECTION 6007(c), THAT YOUR CONDUCT POSES A SUBSTANTIAL**
8 **THREAT OF HARM TO THE INTERESTS OF YOUR CLIENTS OR TO**
9 **THE PUBLIC, YOU MAY BE INVOLUNTARILY ENROLLED AS AN**
10 **INACTIVE MEMBER OF THE STATE BAR. YOUR INACTIVE**
11 **ENROLLMENT WOULD BE IN ADDITION TO ANY DISCIPLINE**
12 **RECOMMENDED BY THE COURT. SEE RULE 101(c), RULES OF**
13 **PROCEDURE OF THE STATE BAR OF CALIFORNIA.**

14 **NOTICE - COST ASSESSMENT!**

15 **IN THE EVENT THESE PROCEDURES RESULT IN PUBLIC DISCIPLINE,**
16 **YOU MAY BE SUBJECT TO THE PAYMENT OF COSTS INCURRED BY**
17 **THE STATE BAR IN THE INVESTIGATION, HEARING AND REVIEW OF**
18 **THIS MATTER PURSUANT TO BUSINESS AND PROFESSIONS CODE**
19 **SECTION 6086.10. SEE RULE 280, RULES OF PROCEDURE OF THE**
20 **STATE BAR OF CALIFORNIA.**

21 Respectfully submitted,

22 THE STATE BAR OF CALIFORNIA
23 OFFICE OF THE CHIEF TRIAL COUNSEL

24 Dated: September 30, 2008

25 By: 

26 Susan I. Kagan
27 Deputy Trial Counsel

28 Maria J. Oropeza
Assigned Deputy Trial Counsel

1 **DECLARATION OF SERVICE BY CERTIFIED MAIL**
2 **RETURN RECEIPT REQUESTED - 7160 3901 9845 6046 8122**

3 **CASE NUMBERS: 06-O-10445 [06-O-13209; 07-O-10836]**

4 I, the undersigned, over the age of eighteen (18) years, whose business address and place of
5 employment is the State Bar of California, 180 Howard Street, Seventh Floor, San Francisco,
6 California 94105-1639, declare that I am not a party to the within action; that I am readily
7 familiar with the State Bar of California's practice for collection and processing of
8 correspondence for mailing with the United States Postal Service; that in the ordinary course of
9 the State Bar of California's practice, correspondence collected and processed by the State Bar
10 of California would be deposited with the United States Postal Service that same day; that I am
11 aware that on motion of party served, service is presumed invalid if postal cancellation date or
12 postage meter date is more than one day after date of deposit for mailing affidavit. That in
13 accordance with the practice of the State Bar of California for collection and processing of
14 mail, I deposited or placed for collection and mailing in the City and County of San Francisco,
15 on the date shown below, a true copy of the within

16 **NOTICE OF DISCIPLINARY CHARGES**

17 in a sealed envelope placed for collection and mailing as certified mail, return receipts
18 requested, **Article No.: 7160 3901 9845 6046 8122** at San Francisco, California on the date
19 shown below, addressed to:

20 **Doron Weinberg**
21 **523 Octavia Street**
22 **San Francisco, CA 94102**

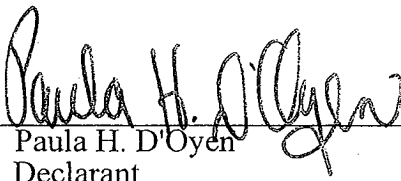
23 in an inter-office mail facility regularly maintained by the State Bar of California addressed to:

24 **N/A**

25 I declare under penalty of perjury under the laws of the State of California that the foregoing is
26 true and correct. Executed at San Francisco, California, on the date shown below.

27 Dated: September 30, 2008

28 Signed: _____


Paula H. D'Oyen
Declarant